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Total Number of Pages in This Submission	18	Application Number	09/758,480
		Filing Date	January 11, 2001
		First Named Inventor	JOSEPH WAYNE FORLER, ET AL
		Art Unit	2611
		Examiner Name	Vivek Srivastava
		Attorney Docket Number	PU010015

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Firm or Individual name	Joel Fogelson
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant : JOSEPH WAYNE FORLER, ET AL.
Serial No. : 09/758,480
Filed : January 11, 2001
For : Automatic On-Screen Display of Auxiliary Information
Examiner : Vivek Srivastava
Art Unit : 2611

APPLICANTS' APPEAL BRIEF

May It Please The Honorable Board:

Applicants appeal the rejection of Claims 1 to 20 of the above-identified application in the Office Action mailed March 11, 2005 and request that such action be reversed. The \$ 500.00 fee for filing this Appeal Brief is to be charged to Deposit Account No. 07-0832.

Please charge any additional fee or credit any overpayment to the above-identified Deposit Account.

Applicants do not request an oral hearing.

REAL PARTY IN INTEREST

The real party in interest, the Assignee, is:

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FRANCE

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RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences.

STATUS OF THE CLAIMS

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Claims 1 to 20 are rejected.

Claims 1 to 20 are appealed.

STATUS OF AMENDMENTS

All amendments were entered and are reflected in the claims included in the Appendix I.

SUMMARY OF THE INVENTION

Applicant discloses (Specification, page 7, second paragraph through page 8, second paragraph) and claims combinations of method elements (Claims 1 – 8) for providing video information from a first source for display user selected video information, combinations of video processing television apparatus elements (claims 9 – 16) for similar purposes and television signal receiving apparatus (Claims 17 – 20) wherein information from two sources is displayed at the same time, the display of the selected information being controlled in each case by a user variable frequency of display parameter that determines or controls when the selected information is displayed.

According to the method of independent claim 1, a method for displaying user selected information comprises the steps of:

providing video information received from a first source for display (specification, page 7, lines 4 - 6);

receiving a selected information from a second source (spec., page 7, lines 6 – 8) ; and

providing the selected information for display while the video information is being displayed, wherein display of the selected information is controlled by a user variable frequency of display parameter that determines when the selected information is displayed (spec., page 7, lines 12 – 16 and page 8, lines 2 – 18).

According to the method of dependent claim 4, a method is provided for allowing a user to set up a schedule for determining how often information is updated, where the scheduling of such an update is modifiable by a user (spec., page 13, lines 6-13).

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According to the apparatus of independent claim 9, a video processing television apparatus comprises:

a first means for receiving a program (spec., page 6, line 9 – page 7, line 2);

a means for selecting information to be received (spec., page 7, lines 17 – page 8, line 2);

a second means for receiving the selected information (spec., page 7, line 3 et seq.);

a means for displaying the program (spec., page 7, "display 16"); and

a means for displaying the selected information during display of the program, wherein said selected information is displayed in accordance with a user variable frequency of display parameter that controls when said selected information is displayed (spec., page 7, line 22 – page 8, line 18).

According to the apparatus of independent claim 17, a television signal receiving apparatus comprises:

a processing unit (14 – see various references in specification and drawings);

a first tuner (spec., page 10, line 10 – "first tuner 34") in communication with said processing unit and operable to receive a program from a first source;

a second tuner (spec., page 10, line 10, "second tuner 36") in communication with said processing unit and operable to receive auxiliary information on a variety of topics from a second source (spec., page 10, last paragraph);

an auxiliary information parser (spec., page 11, line 3) in communication with said processing unit and said second tuner and operable to extract the auxiliary information from the second source;

means for selecting a type of the auxiliary information from the variety of topics for display (spec., page 11, lines 12 et seq.);

a display (spec., page 12, line 6) in communication with said processing unit, said first tuner, and said second tuner;

wherein said processing unit is operable to display the program on the display and concurrently display the selected type of auxiliary information on the display irrespective of the content of the program, and said display of said

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auxiliary information is controlled by a user variable frequency of display parameter that determines the frequency of when auxiliary information is displayed (specification, pages 7 – 8 and 12 - 13).

GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- (1) Whether the methods claimed in Claims 1-3 and 5- 8 are unpatentable under 35 U.S.C. §103(a) over Lajoie et al. (U.S. Patent 6,049,333) in view of Bixler (U.S. Patent 6,507,351);
- (2) Whether the method as claimed in Claim 4 is unpatentable under 35 U.S.C. §103(a) over Lajoie et al. (U.S. Patent 6,049,333) in view of Bixler (U.S. Patent 6,507,351);
- (3) Whether the apparatus claimed in Claims 9 – 16 is unpatentable under 35 U.S.C. §103(a) over Lajoie et al. (U.S. Patent 6,049,333) in view of Bixler (U.S. Patent 6,507,351); and
- (4) Whether the apparatus claimed in Claims 17 – 20 is unpatentable under 35 U.S.C. §103(a) over Lajoie et al. (U.S. Patent 6,049,333) in view of Bixler (U.S. Patent 6,507,351) and K. K. Toshiba (EP 0 766 463 A2).

ARGUMENTS

**GENERAL STATEMENT OF PROPER BASIS FOR REJECTIONS UNDER
35 U.S.C. § 103(a)**

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings of a plurality of references. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on the applicant's own disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The examiner bears the burden of establishing a *prima facie*

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case of obviousness and "can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references." In re Fine, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988). To support a conclusion that a claimed combination is obvious, either: (a) the references must expressly or impliedly suggest the claimed combination to one of ordinary skill in the art, or (b) the examiner must present a convincing line of reasoning as to why a person of ordinary skill in the art would have found the claimed invention to have been obvious in light of the teachings of the references. Ex parte Clapp, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. & Inter. 1985).

The § 103(a) Rejections of Method Claims 1-3 and 5-8 Are Traversed

The Final Rejection does not make out a prima facie case of obviousness with respect to the method Claims 1-3 and 5-8

In the § 103(a) rejection of the method claims 1-3 and 5-8, the Examiner acknowledges that the principal reference "Lajoie fails to disclose wherein the display of the selected (i.e. "second source") information is controlled by a user selected frequency of display parameter that determines when the selected information is displayed" (Rejection, page 3). The Examiner attempts to fill this gap by concluding that it would have been obvious to modify Lajoie according to

"Bixler (who) further teaches a user can display the acquired information according to a user defined schedule and frequency (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1-11). (rejection, page 3);

Unlike the methods of claims 1-3 and 5-8, which require "providing the selected information for display while the video information is being displayed" (claim 1, emphasis added), Bixler's "acquired information" is provided when his apparatus is operating "In the screen saver mode" (Bixler, col. 7, line 32) and, therefore, in Bixler, that acquired information is the only information then displayed. Bixler fails completely to disclose or suggest the feature of claim 1 of "providing the selected information for display while the video information is being displayed" (claim 1). This feature is absent from Lajoie as well.

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Therefore, even if there was some basis for combining Lajoie with Bixler, those two references fall short of disclosing what is presently claimed.

In addition, the Examiner has failed to indicate anything in either of the references which would lead one to combine them in any manner, and certainly not to arrive at the presently claimed invention. It is submitted therefore that no *prima facie* case of obviousness of the rejected method claim 1 has been made out by the Examiner. The primary reference, Lajoie has been acknowledged by the Examiner as lacking one or more elements of independent Claim 1 and dependent Claims 2-3 and 5-8.

The Examiner has attempted to rely on the secondary patent of Bixler to supply missing claim elements. However, the Examiner is not free to create such a combination in the absence of either motivation in the applied references to do so or a reasonable expectation of success. In view of the substantial lack of relevant teachings and disclosure in the Lajoie patent as pointed out above, one skilled in the art would not be aware that there is any reason or basis to consider Lajoie and Bixler together. Without such an awareness, the skilled artisan would not be motivated to modify the teachings of either of these patents.

It should be apparent that Bixler is substantially different from the invention set forth in rejected claims of this application and Bixler does not fill any gap which the Examiner has acknowledged.

According to the teachings and disclosure set forth in Bixler, the ordinary skilled artisan would not be motivated to modify the teachings of the Lajoie patent. Consequently, the Bixler patent cannot provide a basis for a position that its disclosure provides the skilled artisan a reasonable expectation that by somehow adding a user selectable screen saver display to Lajoie would produce a useful, successful apparatus or method. Neither of the disclosures of the Lajoie or Bixler patents acknowledges that there is any problem present in their systems which could be solved by any such combination.

It is submitted that one skilled in the art would not be motivated to combine their teachings for any useful purpose. It is respectfully submitted that the suggested combination can be motivated, if at all, solely by hindsight reasoning guided by the appellant's own disclosure — reasoning that is

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expressly forbidden during the examination of a claim under § 103(a). In re Gorman, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991); In re Fritch, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992).

The rejected dependent method Claims (i.e., 2-3 and 5-8) are submitted to be patentable because each recites limitations to the invention recited in the patentable independent claim 1. In re Fine, 5 U.S.P.Q.2d at 1600. Since no prima facie case of obviousness exists with respect to the independent claim, no prima facie case of obviousness exists with respect to any of the dependent claims.

It is submitted that no prima facie case of obviousness exists with respect to method claims 1 -3 and 5-8 and the rejection of claims 1-3 and 5-8 should be reversed.

The § 103(a) Rejection of Method Claim 4 is Traversed

The Final Rejection does not make out a prima facie case of obviousness with respect to the method of claim 4.

Specifically for dependent claim 4, the claim recites a "schedule for determining the frequency of display for automatically displaying the selected information". This scheduling of the frequency of display is not the same as (or obvious in view of) the toggling of the event database banner as disclosed in Lajoie. Specifically, Lajoie's toggling of the event database on and off is not a "scheduling operation that determines the frequency of display for automatically displaying information", as required by claim 4. In Lajoie's toggling operation, an event data base operation is either displayed (on) or not displayed (off). In comparison, the scheduling operation of claim 4 requires a schedule that determines a frequency for when selected information is to be displayed. This operation is neither disclosed nor suggested in Lajoie or Bixler, alone or in combination.

Therefore, the rejection of claim 4 should be reversed for the foregoing reasons.

It is submitted that no prima facie case of obviousness exists with respect to method claims 4 and the rejection of claim 4 should be reversed.

The § 103(a) Rejections of Apparatus Claims 9 – 16 Are Traversed

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With respect to apparatus claims 9 – 16, independent claim 9 requires "a means for displaying the selected information during display of the program, wherein said selected information is displayed in accordance with a user variable frequency of display parameter that controls when said selected information is displayed" (claim 9, emphasis added).

The Examiner acknowledges that the principal reference "Lajoie fails to disclose wherein the display of the selected (i.e. "second source") information is controlled by a user selected frequency of display parameter that determines when the selected information is displayed" (Rejection, page 3). The Examiner attempts to combine Lajoie with Bixler on the basis that

"Bixler further teaches a user can display the acquired information according to a user defined schedule and frequency (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1- 11)," (rejection, page 3);

Bixler, as noted above, is directed to a screen saver mode of operation for displaying secondary information. However, in Bixler, this is the only time when his secondary information is displayed (i. e. when nothing else is displayed in a screen saver mode). Bixler completely fails to teach anything about "displaying the selected information during display of the program" as required by claim 9.

It is submitted that there is nothing in either Lajoie or Bixler, alone or in combination, would lead anyone to combine any teachings of those two references. It is submitted that the Examiner's suggested incomplete combination has only been arrived at as a result of Applicant's teachings and inappropriate use of hindsight. It is submitted that no prima facie case of obviousness has been made out with respect to apparatus claims (9 – 16).

In addition, the Examiner has failed to indicate anything in either of the references which would lead one to combine them in any manner, and certainly not to arrive at the presently claimed invention. It is submitted therefore that no prima facie case of obviousness of the rejected method claim 1 has been made out by the Examiner. The primary reference, Lajoie has been acknowledged by the Examiner as lacking one or more elements of independent Claim 9 and dependent Claims 10-16.

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The Examiner has attempted to rely on the secondary patent of Bixler to supply missing claim elements. However, the Examiner is not free to create such a combination in the absence of either motivation in the applied references to do so or a reasonable expectation of success. In view of the substantial lack of relevant teachings and disclosure in the Lajoie patent as pointed out above, one skilled in the art would not be aware that there is any reason or basis to consider Lajoie and Bixler together. Without such an awareness, the skilled artisan would not be motivated to modify the teachings of either of these patents.

It should be apparent that Bixler is substantially different from the invention set forth in rejected claims of this application and Bixler does not fill any gap which the Examiner has acknowledged.

According to the teachings and disclosure set forth in Bixler, the ordinary skilled artisan would not be motivated to modify the teachings of the Lajoie patent. Consequently, the Bixler patent cannot provide a basis for a position that its disclosure provides the skilled artisan a reasonable expectation that by somehow adding a user selectable screen saver display to Lajoie would produce a useful, successful apparatus or method. Neither of the disclosures of the Lajoie or Bixler patents acknowledges that there is any problem present in their systems which could be solved by any such combination.

It is submitted that one skilled in the art would not be motivated to combine their teachings for any useful purpose. It is respectfully submitted that the suggested combination can be motivated, if at all, solely by hindsight reasoning guided by the appellant's own disclosure — reasoning that is expressly forbidden during the examination of a claim under § 103(a). *In re Gorman*, 18 U.S.P.Q.2d 1885, 1888 (Fed. Cir. 1991); *In re Fritch*, 23 U.S.P.Q.2d 1780, 1784 (Fed. Cir. 1992).

In view of the noted significant differences between independent claim 9 and the cited (inappropriate) combination of references, reversal of the rejection of apparatus claims 9 – 16 as obvious in view of Lajoie plus Bixler is requested.

The § 103(a) Rejections of Television Receiving Apparatus Claims 17 – 20

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The Final Rejection does not make out a *prima facie* case of obviousness with respect to the television receiving apparatus Claims 17 – 20.

In the § 103(a) rejection of the television receiving apparatus claims, the Examiner acknowledges that "Lajoie fails to disclose wherein the display of the selected (i.e. "second source") information is controlled by a (user variable) frequency of display parameter that determines when the selected information is displayed" (Rejection, page 6). The Examiner attempts to fill this gap by concluding that it would have been obvious to modify Lajoie according to

"Bixler (who) teaches a system which includes a user defined frequency display parameter, etc. (see col 7 lines 31 – 55, fig 14, col 2 lines 10 – 29, col 3 lines 1- 11)," (rejection, page 7); and further, in view of "Kabushiki" (i. e. K. K. Toshiba) which "teaches a TV receiver with two tuners for displaying text and/or graphics on a television picture" (Rejection, page 6).

Unlike the invention of claims 17 - 20, which requires "said processing unit is operable to display the program on the display and concurrently display the selected type of auxiliary information on the display irrespective of the content of the program" (claim 17, emphasis added), Bixler's "acquired information" is provided when his apparatus is operating "In the screen saver mode" (Bixler, col. 7, line 32) and, therefore that is the only information then displayed which is not "concurrent" with the display of a program.

It should also be noted that the Examiner has failed to indicate anything in any of the references which would lead one to combine them in any manner, and certainly not to arrive at the presently claimed invention.

It is acknowledged that the Toshiba reference discloses two tuners but no link has been shown by the Examiner between that reference and either of the other two cited references for making out a *prima facie* case of obviousness.

It is therefore clear that no *prima facie* case of obviousness exists with respect to television receiver claims 17 – 20 and that rejection

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should be reversed.

CONCLUSION

For the foregoing reasons, Appellant submits there is no motivation for and no direct or indirect suggestion of Appellant's claimed combinations of apparatus elements or method elements in the cited references.

The proposition by the Examiner that the prior art may be modified in the manner suggested by the Examiner to produce the Appellant's claimed arrangements does not make the modifications obvious unless the prior art suggests the desirability of the modification. Additionally, the case of Panduit Corp. v. Dennison Mfg Co., 774 F. 2d 1082, 1095 (Fed. Cir. 1985), vacated, 475 U.S. 809 (1986), aff'd on remand, 810 F.2d 1561 (Fed. Cir. 1987), held that, "prior art references must be evaluated on what they taught or suggested...when the invention was made, not on hypothetical modifications made with knowledge of the invention." The Examiner's combinations to arrive the Appellant's claimed features relied on the hindsight benefit of Appellant's teaching, and there is no motivation in to suggest Appellant's claimed combination.

Accordingly, Appellant submits that the Examiner's rejection should be reversed as to Claims 1 – 20 and that the application be held to be in condition for allowance.

Respectfully submitted,

By: 
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APPENDIX I - APPEALED CLAIMS

1. A method for displaying user selected information comprising the steps of:
 providing video information received from a first source for display;
 receiving a selected information from a second source; and
 providing the selected information for display while the video
information is being displayed, wherein display of the selected information is
controlled by a user variable frequency of display parameter that determines
when the selected information is displayed.
2. The method of claim 1, wherein the selected information is selected
from a type of information in a variety of topics.
3. The method of claim 1, further comprising the step of:
 automatically displaying the selected information irrespective of
content of the video.
4. The method of claim 3, further comprising the step of:
 selecting a schedule for determining the frequency of display for
automatically displaying the selected information, wherein
 said schedule is modifiable by a user and
 said schedule represents a user selectable interval of time that
determines a time interval between when said selected information is
displayed.
5. The method of claim 4, wherein the step of selecting a schedule
includes the steps of:
 selecting between frequency of display options of: (i) a continuous
display of the selected type of the received information; (ii) periodic display of
the selected type of the received information; and (iii) as a status change
occurs display of the selected type of the received information.

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6. The method of claim 5, wherein the step of selecting between the frequency of display option of as a status change occurs includes the step of: selecting at least one of as an event changes and as an event is new.
7. The method of claim 2, further comprising the step of selecting a type of the received information from the variety of subjects includes the step of: providing an on-screen display of a selection menu.
8. The method of claim 2, wherein the step of automatically displaying the selected type of information includes the step of: displaying the selected type of information within an image displayed on the display device auxiliary to the display of the video from the first source on the display device.
9. A video processing television apparatus comprising:
 - a first means for receiving a program;
 - a means for selecting information to be received;
 - a second means for receiving the selected information;
 - a means for displaying the program; and
 - a means for displaying the selected information during display of the program, wherein said selected information is displayed in accordance with a user variable frequency of display parameter that controls when said selected information is displayed.
10. The apparatus of claim 9, wherein the means for displaying the selected information includes a means for automatically displaying the selected information irrespective of content of the program.

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11. The apparatus of claim 9, wherein the means for selecting a type of information to be received includes means for selecting a type of information from information on a variety of topics.

12. The apparatus of claim 9, further comprising:
a means for selecting the frequency of display of the selected information.

13. The apparatus of claim 12, wherein said means for selecting the frequency of display of the selected information on the means for displaying includes:

a means for selecting one of (i) a continuous display of the selected information; (ii) periodic display of the selected information; and (iii) as a status change occurs display of the selected information.

14. The apparatus of claim 13, wherein the means for selecting one of (i) a continuous display of the selected information; (ii) a periodic display of the selected information; and (iii) as a status change occurs display of the selected information, includes a means for selecting at least one of (a) as an event changes and (b) as an event is new, in the case of a selection of as a status change occurs display of the selected information.

15. The apparatus of claim 9, further comprising:
a means for generating an on-screen display menu operable to permit user selection of the type of information to be received.

16. The apparatus of claim 9, further comprising:
a means for displaying the selected information within an image displayed on the means for displaying the image being auxiliary to the display of the program.

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17. A television signal receiving apparatus comprising:
 - a processing unit;
 - a first tuner in communication with said processing unit and operable to receive a program from a first source;
 - a second tuner in communication with said processing unit and operable to receive auxiliary information on a variety of topics from a second source;
 - an auxiliary information parser in communication with said processing unit and said second tuner and operable to extract the auxiliary information from the second source;
 - means for selecting a type of the auxiliary information from the variety of topics for display;
 - a display in communication with said processing unit, said first tuner, and said second tuner;
 - wherein said processing unit is operable to display the program on the display and concurrently display the selected type of auxiliary information on the display irrespective of the content of the program, and said display of said auxiliary information is controlled by a user variable frequency of display parameter that determines the frequency of when auxiliary information is displayed.
18. The television receiving apparatus of claim 17, further comprising:
 - an on-screen display generator in communication with said processing unit and said display, and operable to provide an on-screen menu adapted to allow selection of types of auxiliary information by a user.
19. The television receiving apparatus of claim 17, further comprising:
 - means for selecting said user variable frequency of display parameter as a modifiable time interval that determines a length of time in between when said auxiliary information is displayed.
20. The television receiving apparatus of claim 17, wherein the processing unit is operable to display the selected type of the auxiliary information within an image displayed on said display in addition to the display of the program.

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APPENDIX II - EVIDENCE

None submitted

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APPENDIX III - RELATED PROCEEDINGS

None